

Summary of Contents

1	Introduction and Overriding Principles	1-1
2	Personal Physical Injury Recoveries	2-1
3	Discrimination and Other Employee Recoveries	3-1
4	Business and Investment Recoveries	4-1
5	Punitive Damages and Interest	5-1
6	Methods of Substantiating Tax Treatment	6-1
7	Treatment of Payments by the Payor	7-1
8	Structured Settlements	8-1
9	Tax Treatment of Attorney Fees	9-1
10	Tax Treatment of Marital Dissolution	10-1
11	Antitrust Payments and Recoveries	11-1

F	Forms and Agreements	F-1
T	Tables	T-1
I	Index	I-1

Table of Contents

1 Introduction and Overriding Principles

¶ 1.1	IMPORTANCE OF TAX RULES IN TERMINATION OF LITIGATION	1-3
	[A] Real Effects on Position of Parties	1-4
	[B] Potential Malpractice Liability	1-5
¶ 1.2	SETTLEMENT OR JUDGMENT	1-7
¶ 1.3	ORIGIN OF CLAIM TEST	1-9
¶ 1.4	CLASSIFYING RECOVERIES	1-10
	[A] Excludable Recoveries	1-12
	[B] Back Pay	1-14
	[C] Withholding	1-15
	[D] Lost Profits	1-16
	[E] Harm to Capital Assets	1-17
	[F] Reference to Basis of Capital Assets	1-19
¶ 1.5	PUNITIVE DAMAGES	1-20

2 Personal Physical Injury Recoveries

¶ 2.1	OVERVIEW	2-3
	[A] Scope of “Physical Injury”	2-4
	[B] Physical Harm Versus Symptoms	2-5
	[C] Physical Sickness	2-6
¶ 2.2	REQUIREMENTS OF SECTION 104	2-6
	[A] Physical Act	2-7
	[1] Emotional Distress Recoveries	2-8
	[2] What does “Physical” Mean?	2-9
	[B] Observable Bodily Harm	2-11
	[1] Presumed Harm?	2-12
	[2] Causation and Symptoms	2-13
	[C] Medical Expense Reimbursement	2-15
	[1] Medical Expense Offset	2-15
	[2] Future Medical Expenses	2-16
	[D] Tort or Tort-Type Rights	2-17
	[E] Who is Injured?	2-20
	[F] Corporations Not Eligible	2-21
¶ 2.3	WORKERS COMPENSATION DAMAGES AND DISABILITY BENEFITS	2-22
	[A] Workers Compensation Acts	2-23
	[1] Retirement Benefits	2-23
	[2] Statutory Requirements	2-25
	[3] Work-Related Illness or Injury Required	2-27
	[B] Retirement Benefits	2-30
	[C] Amounts Received Through Accident and Health Insurance	2-32
	[1] Source of Premiums	2-33
	[2] Substantiation	2-34
	[3] Disability Pay	2-35
	[4] Bad Faith Claims	2-36
	[D] Veterans Benefits	2-37
¶ 2.4	TYPES OF PERSONAL INJURIES	2-38
	[A] Personal Injury Claims	2-38
	[B] Emotional Distress	2-39
	[C] Physical Sickness	2-40
	[D] Injury to Reputation	2-42
	[E] Alienation of Affections and Loss of Consortium	2-46
	[F] Wrongful Death	2-46
	[G] Age, Sex, and Race Discrimination	2-48
	[H] Wrongful Termination	2-48

[I]	Wrongful Life and Wrongful Birth	2-48
[J]	Claims for Violations of Constitutional Rights	2-49
[K]	Sex Abuse Recoveries	2-52
[L]	Wrongful Imprisonment and Wrongful Conviction	2-53
	[1] Is False Imprisonment Physical?	2-54
	[2] Other False Imprisonment Authorities	2-56
	[3] General Welfare Exception	2-58
[M]	Contract Versus Tort Claims	2-59
¶ 2.5	TREATMENT BY PAYOR	2-61
	[A] Reporting Obligations of Payor	2-61
	[B] Maintaining Consistency in Tax Reporting	2-63
	[C] General Rule of Deductibility	2-65
	[1] Punitive Damages	2-67
	[2] Timing Considerations	2-68

3 Discrimination and Other Employee Recoveries

¶ 3.1	OVERVIEW	3-3
¶ 3.2	RELATIONSHIP TO SECTION 104	3-4
	[A] Medical Expense Reimbursement	3-5
	[B] Back Pay Awards	3-6
	[C] Front Pay	3-7
	[D] Severance Pay	3-7
	[E] Punitive Damages	3-9
¶ 3.3	DISCRIMINATION BASED ON RACE, AGE OR SEX	3-9
	[A] Sex Discrimination	3-10
	[1] <i>Burke</i>	3-10
	[2] Current Tax Treatment of Sex Discrimination Recoveries	3-12
	[B] Age Discrimination	3-14
	[1] <i>Schleier</i>	3-14
	[2] Current Tax Treatment of Age Discrimination Recoveries	3-17
	[C] Racial Discrimination	3-18

¶ 3.4	WRONGFUL TERMINATION AND OTHER EMPLOYMENT RECOVERIES	3-20
	[A] Wrongful Termination	3-20
	[B] Sexual Harassment Recoveries	3-23
	[C] ADA Recoveries	3-25
¶ 3.5	EMPLOYMENT TAX CONSEQUENCES	3-26
	[A] Allocations for Employment Tax Reasons	3-26
	[B] Separation Payments	3-28
	[C] Defendant Employer Ultimately Liable for FICA	3-28
	[D] Time Payable and Allocable	3-30
	[E] Retirement Incentives	3-31
	[F] Penalties for Failure to Withhold	3-31
	[G] Attorney Fees	3-33
	[H] Recoveries Subject to Self-Employment Tax	3-36
¶ 3.6	ERISA CLAIMS	3-36
	[A] Lawsuits Under ERISA	3-36
	[B] Inapplicability of Section 104 Exclusion	3-37
	[C] Wages Characterization	3-39
	[D] Recoveries for Non-Taxable Benefits	3-39
	[E] Employer-Provided Accident or Health Coverage	3-42
	[1] Excludable Recovery	3-43
	[2] Non-Excludable Recovery	3-43
	[3] Excludable/Non-Excludable Combination	3-44
	[4] Application to ERISA Recoveries	3-45
	[F] Back Pay Attributable to Fringe Benefits	3-45
	[1] Back Pay Award of Health and Life Insurance Premiums	3-45
	[2] Back Pay for No-Additional-Cost Service Benefits	3-46
	[3] Application to ERISA Recoveries	3-47
¶ 3.7	DAMAGES DUE TO ADDITIONAL INCOME TAX	3-47
¶ 3.8	CHECKLIST FOR SETTLING EMPLOYMENT CLAIMS	3-51
	[A] Allocation Versus No Allocation	3-51
	[B] Credence Given to Allocations	3-52
	[C] Lump-Sum Payments and General Releases	3-55
	[D] Lack of Adverse Interests	3-59
	[E] Insurance Considerations	3-61
	[F] Scope of Settlement Discussions	3-61
	[G] Reporting Obligations of Employer	3-62
	[H] Maintaining Consistency in Tax Reporting	3-64
	[I] Use of Tax Advisor	3-67

4 Business and Investment Recoveries

¶ 4.1	OVERVIEW	4-3
	[A] Presumption of Lost Profits Recovery	4-3
	[B] Damage to Goodwill and Other Capital Recoveries	4-5
¶ 4.2	CHARACTER OF PAYMENTS	4-7
	[A] Types of Lost Profit Recoveries	4-9
	[1] Non-Capital Recoveries	4-9
	[2] Commission Income	4-10
	[3] Miscellaneous Lost Profit Recoveries	4-11
	[4] Non-Taxable Bequest or Inheritance	4-12
	[B] Fraud, Misrepresentation and Breach of Fiduciary Duty	
	Claims	4-12
	[1] Fraud Claims	4-12
	[2] Securities Fraud in Reorganization	4-12
	[3] Breach of Fiduciary Duty Claims	4-14
	[C] Operation of Tax Benefit Rule	4-15
	[D] Damages for Additional Federal Income Tax	4-16
	[E] Obtaining Tax Damages and Tax Gross-Ups	4-18
	[F] Discharge of Debt	4-21
	[1] In General	4-21
	[2] Auction Rate Securities	4-22
¶ 4.3	LITIGATION INVOLVING STOCK	4-22
	[A] In General	4-22
	[B] Shareholder Derivative Suits	4-25
¶ 4.4	PATENT INFRINGEMENT AND ROYALTY RECOVERIES .	4-26
	[A] Patent Infringement Recoveries	4-26
	[B] Patent Royalty Recoveries	4-26
¶ 4.5	OTHER BUSINESS AND INVESTMENT INJURIES	4-29
	[A] Recoveries Under Contract Rights	4-29
	[B] Recovery for Breach of Covenant Not to Compete	4-30
	[C] Recoveries Under Liquidated Damages Provisions	4-31
	[1] Covenant Non-Severable from Sale of Goodwill	4-31
	[2] Covenant Not to Compete Not Associated With	
	Sale of Goodwill	4-33
	[D] Proving Capital Asset Status and Basis	4-34
	[E] Allocating Among Claims	4-39

[F]	Payments of Liabilities Involving Deferred Compensation Plans	4-40
[1]	Restorative Payments to Qualified Employer Plans ..	4-41
[2]	Restorative Payments to IRAs	4-43
[G]	Involuntary Conversions	4-44
[H]	Gain on Sale of Residence	4-46
[I]	Goodwill	4-47
¶ 4.6	LUMP-SUM AND LOTTERY CASES	4-48
[A]	Substitute-for-Ordinary-Income Doctrine	4-48
[B]	Ninth Circuit Test	4-49
[1]	Underlying Investment Test	4-50
[2]	Accretion in Value	4-50
[C]	Third Circuit Test	4-50
[1]	Carve-Outs	4-51
[2]	Character of the Asset	4-52
[D]	Seventh, Tenth and Eleventh Circuit Analysis	4-52
[E]	No Bright-Line	4-54
¶ 4.7	OTHER CAPITAL VERSUS ORDINARY ISSUES	4-54
[A]	Sale or Exchange Requirement for Capital Gain Treatment .	4-54
[B]	Section 1234A and the Sale or Exchange Requirement	4-56
¶ 4.8	WILL CONTEST RECOVERIES	4-57
[A]	Generally Non-Taxable	4-57
[B]	Compensation Versus Inheritance?	4-59
[C]	When Will Contest Recoveries Are Taxable	4-61
[D]	Periodic Payments	4-64
[E]	Income in Respect of a Decedent	4-64
[1]	Definition	4-64
[2]	Installment Obligations	4-65

5 Punitive Damages and Interest

¶ 5.1	OVERVIEW	5-3
¶ 5.2	PUNITIVE DAMAGES RECEIVED	5-4
[A]	Overview	5-4
[B]	Definition of Punitive Damages	5-5
[C]	Punitive Damages Without a Judgment	5-6

[D]	Allocation Between Compensatory and Punitive Damages	5-7
[1]	Pervasiveness of Punitive Characterization	5-8
[2]	IRS Rulings Regarding Punitive Allocations	5-9
[E]	The Best Evidence Rule	5-9
[F]	Taxation of the State’s Portion of Punitive Damages	5-11
[G]	Assignments of Punitive Damages	5-12
[H]	Punitive Damages in Antitrust Cases	5-13
¶ 5.3	PUNITIVE DAMAGES PAID	5-14
[A]	General Rule of Deductibility	5-14
[B]	Possible Non-Deductibility	5-15
[C]	Obama Administration’s Proposal	5-16
[1]	Denial of Deduction Proposed	5-16
[2]	Business Expense Culture	5-18
[3]	Fine or Penalty Analog	5-19
[D]	Timing Considerations With Punitive Damages	5-20
[E]	Business Expense Requirements	5-21
[F]	“Punitive” Portion of Antitrust Damages	5-22
¶ 5.4	TREATMENT OF INTEREST TO PAYEE	5-23
[A]	Overview	5-23
[B]	Pre-Judgment Interest	5-23
[C]	Settlement Versus Judgment	5-25
[D]	“Interest” When Cases Settle on Appeal	5-26
[1]	Disclaiming All Interest	5-27
[2]	Allocating Interest	5-29
[E]	Caution on Interest Designation	5-30
[F]	Post-Judgment Interest and Timing Issues	5-32
[G]	Delay Damages	5-34
[H]	Importance of Payor’s Intent	5-35
[I]	Interest in Structured Settlements	5-36
[J]	Interest in Divorce Settlements	5-36
¶ 5.5	TREATMENT OF INTEREST BY PAYOR	5-37
[A]	Classification of Interest for Investment Activities	5-38
[B]	Personal Activities	5-40
[C]	Allocations Between Attorney Fees and Interest	5-42

6 Methods of Substantiating Tax Treatment

¶ 6.1	OVERVIEW	6-3
¶ 6.2	INTENT OF PAYOR	6-3
¶ 6.3	DOCUMENTING A SETTLEMENT	6-5
	[A] Complaint	6-5
	[B] Evidence of Litigation Aside From the Complaint	6-6
	[1] Allocating Among Claims	6-8
	[2] Settlement Agreements	6-10
	[3] Identity of Payor	6-11
	[C] Documenting and Allocating Claims	6-13
	[1] Lack of Adverse Interests	6-13
	[2] Specificity in Settlement Agreement	6-14
	[3] Reasonable Relationship	6-15
	[4] <i>Pro Rata</i> Allocations	6-18
	[5] Explicit Manifestations of Intent	6-19
	[6] Importance of Settlement Agreement	6-19
	[D] Allocations of Business Recoveries	6-20
	[1] Presumption of Lost Profits	6-21
	[2] Demonstrating Harm to Capital and Establishing Basis	6-22
	[3] Difficulties in Avoiding Ordinary Income Characterization	6-23
	[E] Use of General Releases Without Tax Allocations	6-24
	[1] Taxpayer's Burden of Proof	6-25
	[2] Intent of Payments	6-27
	[3] No Allocation	6-29
	[F] Timing of Tax Characterization Agreement	6-30
¶ 6.4	ACTIONS AND TESTIMONY INFLUENCING TAX TREATMENT	6-31
	[A] Maintaining Consistency in Tax Reporting	6-31
	[B] Value of Testimony	6-34
	[C] Consistency in Reporting	6-35
¶ 6.5	TAX TREATMENT OF VERDICT	6-37
	[A] Allocation in Judgment	6-37
	[B] Using Jury Instructions	6-39
	[C] Using Special Verdicts	6-39

¶ 6.6	ASSIGNING CLAIMS	6-40
	[A] Validity of an Assignment	6-42
	[B] Timing of Assignment	6-43
	[C] Successful Assignments	6-45
	[D] Impact of an Assignment	6-46
	[E] Valuation	6-46
¶ 6.7	ARE TAXES ESSENTIAL TO A SETTLEMENT?	6-47
7	Treatment of Payments by the Payor	
¶ 7.1	OVERVIEW	7-3
	[A] Importance of Payor	7-3
	[B] Distinction Between Settlements and Judgments	7-4
¶ 7.2	BUSINESS EXPENSES	7-4
	[A] General Rule of Deductibility	7-4
	[1] Punitive Damages	7-5
	[2] Timing Considerations	7-6
	[3] Problems With Personal Expenditures	7-7
	[B] Business Expense Requirements	7-12
	[C] Ordinary and Necessary	7-12
	[D] Reasonableness of Expenses	7-15
	[E] Trade or Business Nexus	7-15
	[1] Directly Connected	7-16
	[2] Determining Nexus	7-16
	[3] Nexus to Income-Producing Activity	7-17
	[F] Deductibility of Payments Made by Affiliates and Other Corporations	7-18
	[G] Public Policy Restrictions	7-20
	[H] AMT and Related Issues	7-22
¶ 7.3	NO DEDUCTION FOR FINES AND PENALTIES	7-23
	[A] Intent	7-23
	[B] <i>Quid Pro Quo</i> Payments	7-24
	[C] Fines Versus Late Fees	7-25
	[D] Compensatory Payments Distinguished From Fines	7-25
	[E] Proving Compensatory Character	7-26
	[F] False Claims Act	7-28
	[G] Restitution Payments	7-29
	[H] Penalties to Encourage Compliance With the Law	7-29
	[I] Attorney Fees in Defending Against Fines	7-30

¶ 7.4	WHETHER TO CAPITALIZE OR EXPENSE	7-30
	[A] Amounts Paid to Facilitate Acquisitions and Certain Other Costs	7-31
	[B] Acquiring or Defending Goodwill	7-33
	[C] Litigation Over Purchase or Sale	7-34
	[1] Preservation Versus Sale	7-35
	[2] Contract and Intellectual Property Rights	7-36
	[D] Litigation Over Title to Property	7-37
	[E] Payments for Securities Violations	7-38
	[F] Treatment of Environmental Liabilities	7-39
	[G] Increase to Value of Property	7-40
	[H] Shareholder Litigation	7-41
¶ 7.5	CIVIL AND CRIMINAL RICO PAYMENTS	7-42
	[A] Appropriateness of RICO Payment Deductions	7-42
	[B] Deduction of Legal Fees in RICO Act Cases	7-43
¶ 7.6	TIMING OF DEDUCTIONS	7-44
	[A] General Rule of Deductibility	7-44
	[B] Meeting the Accrual Test	7-44
	[C] Applicability of Economic Performance Rules	7-46
¶ 7.7	CLAIM OF RIGHT DOCTRINE	7-47
	[A] Claim of Right Background	7-47
	[B] Section 1341	7-47
	[C] Case Law Denying Claim of Right Relief	7-48
	[D] Case Law Allowing Claim of Right Relief	7-51

8 Structured Settlements

¶ 8.1	OVERVIEW	8-5
	[A] Personal Physical Injuries	8-5
	[B] Third-Party Assignees	8-7
	[C] Types of Actions Suitable for Structured Settlements	8-7
	[D] History of Periodic Payments	8-8
	[1] Revenue Ruling 77-230	8-8
	[2] Revenue Ruling 79-220	8-9
	[3] Revenue Ruling 79-313	8-9
	[E] Types of Periodic Payment Arrangements	8-10

[F]	Funding Periodic Payments	8-11
[1]	Purchase of Annuity by Insurer	8-11
[2]	Payment of Annual Amounts by Insurer	8-12
[3]	Dealing With the Security Problem	8-12
¶ 8.2	ADVANTAGES AND DISADVANTAGES OF STRUCTURED SETTLEMENTS	8-13
[A]	Payment Stream Versus Lump-Sum	8-13
[B]	Risk of Insolvency	8-14
[C]	Considerations for Defendant	8-15
[D]	Viatical Settlements and Discount Transactions	8-16
[E]	Excise Tax on Structured Settlement Factoring	8-17
¶ 8.3	TAX TREATMENT OF PAYMENTS TO PAYEE	8-19
[A]	Overview	8-19
[B]	Qualified Assignments	8-20
[C]	Receiving Excludable Damages as Periodic Payments	8-20
[D]	Constructive Receipt Doctrine	8-21
[1]	Settlement Options Not Constructive Receipt	8-23
[2]	Knowledge Is Not Constructive Receipt	8-24
[3]	Finality of Award	8-26
[E]	Economic Benefit Doctrine	8-27
[1]	Annuities and Trusts	8-27
[2]	Consequences of the Economic Benefit and Constructive Receipt Doctrines	8-28
¶ 8.4	TIMING OF DEFENDANT'S DEDUCTION IN STRUCTURED SETTLEMENTS	8-29
[A]	Allowability of Deduction	8-29
[B]	Meaning of Economic Performance	8-31
[C]	Services and Property Provided to the Taxpayer	8-32
[D]	Tort Liabilities and Workers Compensation	8-32
[E]	Deductions for Other Items	8-34
[F]	Exceptions for Certain Recurring Items	8-34
[G]	Designated Settlement Funds and Qualified Settlement Funds	8-35
[H]	Other Special Rules	8-40
[I]	Reporting Requirements for Qualified Settlement Funds ...	8-40
¶ 8.5	QUALIFIED ASSIGNMENTS	8-41
[A]	Qualified Assignments in General	8-41
[B]	Qualified Funding Asset	8-43
[C]	Required Physical Injury or Sickness	8-44
[D]	Periodic Payments Must Be Excludable by the Recipient ..	8-45

[E]	Payments Must Be Fixed and Determinable	8-45
[F]	Assignor Must Be Party to Suit or Agreement	8-45
[G]	No Acceleration, Deferral or Adjustment	8-45
[H]	Example of Qualified Assignments	8-46
¶ 8.6	NON-QUALIFIED ASSIGNMENTS	8-46
[A]	Non-Qualified Assignments Defined	8-46
[B]	Mechanics of Non-Qualified Assignment	8-47
[C]	IRS Ruling	8-47
[D]	Lack of Constructive Receipt	8-51
[E]	Lack of Economic Benefit	8-52
[F]	Lack of Cash Equivalency	8-53
¶ 8.7	TREATMENT OF ATTORNEY FEES	8-54
[A]	<i>Childs</i> Case	8-56
[B]	Structure Attorney Fees Carefully	8-57
[C]	Fee Agreement	8-58
[D]	State Law	8-58
[E]	Address Fees Early	8-59
[F]	Annuity Payments to Attorneys	8-60
[G]	Assignment of Income and Assignments of Attorney Fees	8-61
¶ 8.8	FUNDING OF TRUSTS FOR PLAINTIFF'S BENEFIT	8-62
[A]	Examples of Trusts	8-62
[B]	Special Needs Trusts	8-63

9 Tax Treatment of Attorney Fees

¶ 9.1	OVERVIEW	9-5
[A]	Categories of Legal Expenses	9-5
[1]	Capitalize	9-5
[2]	Business	9-5
[3]	Investment	9-5
[4]	Personal	9-6
[B]	Origin of Claim Controls	9-6
[C]	Allocation Between Business and Personal	9-8
¶ 9.2	ATTORNEY FEES AS BUSINESS EXPENSES	9-8
[A]	In General	9-8
[B]	Ordinary and Necessary Expenses	9-9
[C]	Reasonableness of Expenses	9-10

[D] Trade or Business Nexus	9-11
[1] Directly Connected	9-11
[2] Capitalize Versus Deduct	9-12
[E] Nexus to Income-Producing Activity	9-12
[1] Preserve Income-Producing Assets	9-13
[2] Disallowance for AMT Purposes	9-13
[3] Jobs Act Amendment	9-14
[F] Problems With Personal Expenditures	9-14
[G] Problems With Tax-Exempt Income	9-16
[H] Identity of Payor	9-16
[I] Employee, Officer, and Director Attorney Fees	9-17
[J] Public Policy Restrictions	9-19
¶ 9.3 STATUTORY ABOVE-THE-LINE ATTORNEY FEE DEDUCTION	9-20
[A] Employment Claims	9-20
[B] False Claims Act	9-21
[C] Scope of the “Catchall”	9-22
[D] Effective Date	9-22
¶ 9.4 CURRENTLY DEDUCTIBLE VERSUS CAPITALIZABLE	9-23
[A] Preservation Versus Sale	9-23
[B] Facilitating Acquisitions and Certain Other Costs	9-24
[C] Acquiring or Defending Goodwill	9-26
[D] Litigation Over Purchase	9-27
[E] Litigation Over Title to Property	9-28
[F] Payments for Securities Violations	9-29
[G] Environmental Liabilities	9-30
[H] Increase to Value of Property	9-31
¶ 9.5 DISPUTES BETWEEN CORPORATION AND SHAREHOLDER	9-32
[A] In General	9-32
[B] Attorney Fees in Derivative Suits	9-34
¶ 9.6 DISCIPLINARY, MALPRACTICE AND CRIMINAL PROCEEDINGS	9-36
[A] Personal Versus Business	9-36
[B] Criminal Activities	9-37
[C] As Investment Expenses	9-39

¶ 9.7	OTHER ATTORNEY FEES ISSUES	9-39
	[A] Client Expenses	9-39
	[B] Netting Attorney Fees: The <i>Banks</i> Decision	9-43
	[C] Exceptions to <i>Banks</i>	9-46
	[1] Partnership	9-46
	[2] State Law	9-46
	[3] Property Disposition	9-47
	[4] Reimbursed Employee Business Expense	9-47
	[5] False Claims Act	9-47
	[6] Statutory Fee Shifting	9-47
	[7] Injunctive Relief	9-49
	[D] Post- <i>Banks</i>	9-49
	[E] AMT Considerations	9-51
	[F] Wages Treatment for Attorney Fees	9-52
¶ 9.8	ATTORNEY FEES IN CLASS ACTIONS	9-55
	[A] Opt-in Versus Opt-out	9-56
	[B] Reporting Obligations	9-59
¶ 9.9	REPORTING PAYMENTS TO ATTORNEYS	9-60
	[A] Section 6045(f)	9-60
	[B] Middleman Regulations	9-63
¶ 9.10	ATTORNEY FEES IN CONNECTION WITH DIVORCE	9-68
	[A] General Rule of Non-Deductibility	9-68
	[B] Deductibility of Legal Fees Attributable to Collection of Alimony	9-69
	[1] Scope of Deductible Fees	9-69
	[2] 2% AGI Limitation	9-70
	[3] Disallowance of Section 212 Expenses for AMT Purposes	9-71
	[C] Advice of Tax Counsel	9-71
	[D] Capitalizing Legal Fees in Divorce Actions	9-72
	[E] Accounting Fees in Divorce Actions	9-73
	[F] Allocating and Substantiating Fees	9-73
	[G] Deduction of Fees by Payor	9-75

10 Tax Treatment of Marital Dissolution

¶ 10.1 OVERVIEW	10-5
¶ 10.2 PROPERTY SETTLEMENTS IN DIVORCE	10-5
[A] Effective Dates of Section 1041	10-6
[B] Transfers Between Former Spouses Incident to Divorce ...	10-6
[C] Basis and Holding Period of Property	10-8
[1] Basis of Property	10-8
[2] Holding Period of Property	10-9
[D] Purchases of Property Between Spouses	10-9
[1] Purchase of Principal Residence	10-10
[2] What Constitutes a Principal Residence	10-12
[3] Section 121 Exclusion	10-12
[4] Business or Investment Property	10-13
[E] Recapture on Disposition or Change in Use	10-15
[F] Record Keeping Requirements Under Section 1041	10-16
[G] Effect of Tax Basis on Subsequent Gain Recognition	10-16
[H] Community Property	10-18
¶ 10.3 AVOIDING SECTION 1041 TREATMENT	10-19
[A] Transfers to Third-Parties	10-20
[B] Transfers Not Incident to Divorce	10-21
[C] Transfers Between Unmarried Cohabitants	10-21
¶ 10.4 PROPERTY DIVISIONS INVOLVING PARTICULAR ASSETS	10-22
[A] Treatment of Installment Sales	10-22
[B] Dividing Corporations	10-23
[1] Stock Redemptions	10-24
[2] Final Regulations on Redemptions in Divorce	10-25
[3] Community Property Transfers	10-27
[C] Dividing Partnerships	10-28
[D] Dividing Life Insurance Policies	10-29
[E] Dividing Real and Personal Property	10-30
[F] Dividing Retirement Benefits	10-30
[G] Stock Options and Deferred Compensation in Divorce	10-33
¶ 10.5 COMPENSATION AND ASSIGNMENT OF INCOME PROBLEMS	10-34
[A] IRS Position on Assignments of Income	10-34
[B] Case Law	10-35
[C] Treatment of Receivables	10-35

¶ 10.6	ALIMONY PAYMENTS	10-36
[A]	Payment Pursuant to Divorce or Separation Instrument	10-36
[1]	Alimony Characterization Disputes	10-37
[2]	Housing Costs	10-40
[B]	Forms of Payment	10-41
[1]	Paying Attorney Fees of Ex-Spouse	10-42
[2]	Payment for Cars	10-43
[3]	Retirement Benefits	10-44
[C]	Payment for or on Behalf of Spouse	10-44
[1]	Payments to Third-Parties	10-44
[2]	Types of Liabilities	10-45
[D]	Lack of Non-Deductibility Designation	10-46
[E]	Not Members of Same Household	10-47
[F]	Restricted Duration of Payments	10-48
[G]	Joint Returns Prohibited	10-51
[H]	Alimony Paid to Foreigners	10-51
¶ 10.7	RECAPTURE AND OTHER ALIMONY	10-52
[A]	Recapture of Alimony	10-52
[1]	Determine Excess Payments for Second Post-Separation Year	10-52
[2]	Determine Excess Payments for First Post-Separation Year	10-53
[3]	Determine Recapturable Excess Alimony Payments ..	10-53
[4]	Exceptions to Recapture	10-54
[B]	Paying Past Due Amount	10-54
[C]	Payee's Social Security Number	10-55
[D]	Spousal IRAs	10-55
[E]	Alimony Trusts	10-56
[F]	Past Due Child and Spousal Support Payments	10-56
[G]	Interest in Divorce Settlements	10-56
¶ 10.8	CHILD SUPPORT PAYMENTS	10-57
[A]	Definition of Child Support	10-58
[B]	Collecting Child Support From Tax Refunds	10-60
[C]	Dependency Exemption	10-60
[D]	Multiple Support Agreements	10-61
[E]	Joint Custody	10-62
[F]	Deduction for Medical Expenses	10-62

11 Antitrust Payments and Recoveries

¶ 11.1 OVERVIEW	11-3
[A] Antitrust Laws	11-3
[1] Sherman Antitrust Act	11-3
[2] Clayton Act	11-4
[3] Robinson-Patman Act	11-4
[4] Federal Trade Commission Act	11-4
[5] Other Laws	11-4
[B] Types of Antitrust Enforcement	11-4
¶ 11.2 DEDUCTING ANTITRUST PAYMENTS	11-5
[A] Treatment of Damages Generally	11-6
[B] Related Criminal Proceedings	11-7
[1] Meaning of “Related”	11-8
[2] <i>Fisher Companies, Inc.</i>	11-11
[3] Damages Paid Prior to a Complaint Being Filed	11-11
[4] Statute of Limitations	11-12
[C] Deducting Payments to the Government	11-14
[D] Damages Paid to States Under State Law	11-14
[E] Deduction for Fines and Penalties	11-15
¶ 11.3 DEDUCTING LEGAL FEES IN ANTITRUST ACTIONS	11-18
[A] Ordinary and Necessary Expenses	11-18
[1] Favorable Case Law	11-19
[2] Deduct or Capitalize	11-20
[B] Reasonableness of Expenses	11-20
[C] Trade or Business Nexus	11-20
[D] Criminal Defense Fees	11-21
[E] Officers’ Expenses	11-22
¶ 11.4 TAXATION OF ANTITRUST RECOVERIES	11-22
[A] General Considerations	11-22
[B] Types of Antitrust Recoveries	11-23
[1] Recoveries for Lost Profits	11-23
[2] Harm to Capital	11-23
[3] Harm to Non-Capital Assets	11-24
[C] Burden of Proof Regarding Character of Recovery	11-24
[1] Importance of Complaint	11-25
[2] Importance of Express Allocations	11-25
[D] Damages for Injury to Capital	11-26
[1] Examples of Harm to Capital Assets	11-27
[2] Basis Recovery	11-27

[E]	Recoveries Treated as Purchase Price Reduction	11-28
[F]	Deductibility of Recoveries Under Section 186	11-29
¶ 11.5	TREATMENT OF PUNITIVE DAMAGES IN ANTITRUST ACTIONS	11-32
¶ 11.6	OTHER TYPES OF ANTITRUST DECREES	11-33
[A]	Sales of Assets	11-33
[B]	Spinoffs	11-33
[C]	Dissolution Required by Decree	11-34

F Forms and Agreements

¶ F	FORMS AND AGREEMENTS	F-1
[A]	Internal Revenue Code Section 104	F-3
[B]	Internal Revenue Code Section 6045	F-7
[C]	Treasury Regulation Section 1.104-1	F-11
[D]	Treasury Regulation Section 1.6041-1	F-15
[E]	Treasury Regulation Section 1.61-14	F-25
[F]	Proposed Treasury Regulation Section 1.6045-1P	F-27
[G]	Internal Revenue Service Form 1099-MISC	F-47
[H]	Internal Revenue Service Private Letter Ruling 200041022	F-55
[I]	Internal Revenue Service Publication 4345	F-63
[J]	Lawsuit Awards and Settlements (From Internal Revenue Manual)	F-65
[K]	Agreement and Release Involving Personal Physical Injuries	F-121
[L]	Agreement and Release Involving Employment Discrimination	F-131
[M]	Settlement Agreement and Release Relating to Personal Physical Injuries (For Claimant)	F-135
[N]	Settlement Agreement and Release Relating to Personal Physical Injuries (For Litigation)	F-141
[O]	Uniform Qualified Assignment	F-147
[P]	Uniform Qualified Assignment and Release Agreement	F-155
[Q]	Section 1041 Election (Relating to Transfers Incident to Divorce)	F-169
[R]	Qualified Settlement Fund Checklist	F-171
[S]	Release and Indemnity Agreement Between Qualified Settlement Fund Trust, Claimants/Releasors, and Transferors/Releasees	F-175
[T]	Proposed Treasury Regulation Section 127270-06	F-187

T Tables

¶ T.1	TABLE OF INTERNAL REVENUE CODE SECTIONS	T-3
¶ T.2	TABLE OF TREASURY MATERIALS	T-9
¶ T.3	TABLE OF LETTER RULINGS, REVENUE RULINGS, REVENUE PROCEDURES, AND OTHER IRS RELEASES . . .	T-13
¶ T.4	TABLE OF NAMED AND OTHER STATUTES	T-19
¶ T.5	TABLE OF CASES	T-23
¶ T.6	TABLE OF AUTHORITIES AND SOURCES CITED	T-55

I Index

¶ I	INDEX	I-1
-----	-----------------	-----

